

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 JOB'S DAUGHTERS INTERNATIONAL,

10 Plaintiffs,

11 v.

12 HEIDI YOAST,

13 Defendant.

No. C16-1573RSL

ORDER GRANTING SHELLY
COLE'S MOTION TO DISMISS
FOR LACK OF PERSONAL
JURISDICTION

14
15 This matter comes before the Court on "Counterclaim Defendant Shelly Cole's Motion to
16 Dismiss Counterclaim" for lack of personal jurisdiction." Dkt. # 32. Defendant Heidi Yoast has
17 asserted counterclaims of intentional interference with contractual relations, interference with
18 business expectancy, defamation, and intentional infliction of emotional distress against Ms.
19 Cole. Dkt. # 19 at 8-11. Ms. Cole, an officer of defendant Job's Daughters International ("JDI"),
20 seeks dismissal of all claims under Fed. R. Civ. P. 12(b)(2) on the ground that the Court lacks
21 personal jurisdiction over her.

22 Ms. Yoast has the burden of demonstrating that the Court may exercise personal
23 jurisdiction over Ms. Cole. In re W. States Wholesale Natural Gas Antitrust Litig., 715 F.3d 716,
24 741 (9th Cir. 2013). In evaluating Ms. Cole's jurisdictional contacts, the Court accepts
25 uncontroverted allegations in the counterclaim as true. Menken v. Emm, 503 F.3d 1050, 1056
26 (9th Cir. 2007). Because the motion is based on written materials rather than an evidentiary

ORDER GRANTING SHELLY COLE'S
MOTION TO DISMISS

1 hearing, the Court evaluates the uncontroverted allegations and the evidence submitted to
2 determine whether Ms. Yoast has made a prima facie showing of jurisdictional facts.
3 Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800 (9th Cir. 2004). Conflicts in the
4 evidence provided by the parties must be resolved in Ms. Yoast's favor. Id.

5 Pursuant to Fed. R. Civ. P. 4(k)(1)(A), federal courts ordinarily follow state law when
6 determining the extent to which they can exercise jurisdiction over a person. Daimler AG v.
7 Bauman, __ U.S. __, 134 S. Ct. 746, 753 (2014). The Washington Supreme Court has held that,
8 despite the rather narrow language used in Washington's long-arm statute, RCW 4.28.185, the
9 statute "extends jurisdiction to the limit of federal due process." Shute v. Carnival Cruise Lines,
10 113 Wn.2d 763, 771 (1989). The Court therefore need determine only whether the exercise of
11 jurisdiction comports with federal constitutional requirements. Easter v. Am. W. Fin., 381 F.3d
12 948, 960 (9th Cir. 2004).

13 In order to justify the exercise of jurisdiction over a non-resident under the federal
14 constitution, Ms. Yoast must show that Ms. Cole had "certain minimum contacts with [the
15 forum] such that the maintenance of the suit does not offend traditional notions of fair play and
16 substantial justice." Int'l Shoe Co v. Washington, 326 U.S. 310, 316 (1945) (internal quotation
17 marks omitted). Two different categories of personal jurisdiction have developed, namely
18 "general jurisdiction" and "specific jurisdiction." "A court may assert general jurisdiction over
19 foreign (sister-state or foreign-country) [defendants] to hear any and all claims against them
20 when their affiliations with the State are so 'continuous and systematic' as to render them
21 essentially at home in the forum State." Goodyear Dunlop Tires Operations, S.A. v. Brown, 564
22 U.S. 915, 919 (2011) (quoting Int'l Shoe, 326 U.S. at 317). Specific jurisdiction, on the other
23 hand, "focuses on the relationship among the defendant, the forum, and the litigation" and exists
24 when "the defendant's suit-related conduct [creates] a substantial connection with the forum
25 State." Walden v. Fiore, __ U.S. __, 134 S. Ct. 1115, 1121 (2014) (internal quotation marks and
26

1 citations omitted). Ms. Yoast argues that the Court may assert specific jurisdiction over Ms. Cole
2 in this case.

3 The state's authority to bind a non-resident defendant is justified only if there is a
4 sufficient connection between the defendant, the forum, and the cause of action. Helicopteros
5 Nacionales de Columbia, SA v. Hall, 466 U.S. 408, 413-14 (1984). The Ninth Circuit applies a
6 three-prong test when determining whether to exercise specific jurisdiction over a non-resident:

7 (1) The non-resident defendant must purposefully direct his activities or
8 consummate some transaction with the forum or resident thereof; or perform some
9 act by which he purposefully avails himself of the privileges of conducting
activities in the forum, thereby invoking the benefits and protections of its laws;

10 (2) the claim must be one which arises out of or relates to the defendant's forum-
11 related activities; and

12 (3) the exercise of jurisdiction must comport with fair play and substantial justice,
13 *i.e.*, it must be reasonable.

14 Dole Food Co., Inc. v. Watts, 303 F.3d 1104, 1111 (9th Cir. 2002). Ms. Yoast argues that Ms.
15 Cole purposefully directed¹ her activities at Washington when she made defamatory or otherwise
16 disparaging comments about a person whom she knew to be a Washington resident. Having
17 reviewed the memoranda, declarations, and exhibits submitted by the parties,² the Court finds as
18 follows:

19
20
21 ¹ The allegations do not support the exercise of jurisdiction based on the separate purposeful
22 availment theory. Ms. Cole's statements were not made in Washington, did not create a continuing
relationship with or obligation to a forum resident, conferred no benefit, privilege, or protection under
Washington law, and were not subject to the state's regulation.

23 ² Much of the evidence submitted by Ms. Yoast has not been authenticated and contains
24 hearsay. While the Court assumes that a foundation can be laid for the text messages, email strings, and
25 Facebook printouts at trial, they are not admissible for the purpose of establishing the truth of the non-
26 party statements made therein. The communications have, however, been considered for purposes of
identifying Ms. Cole's contacts with the forum.

1 **(1) Purposeful Direction**

2 In her counterclaim, Ms. Yoast alleges that Ms. Cole made statements to JDI members at
3 a July 2016 meeting in Grand Rapids, Michigan, that the statements were untrue, and that they
4 caused emotional distress and resulted in members cancelling orders and/or not placing new
5 orders from Ms. Yoast. Conduct which occurs entirely outside the forum state may satisfy the
6 purposeful direction element of the jurisdictional analysis if the defendant “(1) committed an
7 intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows
8 is likely to be suffered in the forum state.” Dole Food, 303 F.3d at 1111. Whether Ms. Cole is
9 subject to personal jurisdiction in this forum turns on the second prong: whether she “expressly
10 aimed” her conduct at the forum.

11 The “effects test” was first articulated in Calder v. Jones, 465 U.S. 783 (1984), but the
12 Supreme Court recently felt compelled to clarify that the critical issue is whether defendant
13 expressly aimed his or her conduct at the forum state itself, rather than at persons who reside in
14 the forum. Walden, 134 S. Ct. at 1122. “[M]ere injury to a forum resident is not a sufficient
15 connection to the forum[: rather,] an injury is jurisdictionally relevant only insofar as it shows
16 that the defendant has formed a contact with the forum State.” Id. at 1125. The fact that Ms.
17 Yoast, a Washington resident, was the subject of Ms. Cole’s statements in Michigan does not
18 show that Ms. Cole aimed her tortious interference or defamatory statements at Washington. See
19 Picot v. Weston, 780 F.3d 1206, 1214 (9th Cir. 2015). There is no evidence that Ms. Cole
20 publicized the statements in Washington or otherwise targeted a Washington audience. As was
21 the case in Walden and Picot, Ms. Yoast’s injuries are entirely personal to her and would have
22 been the same regardless of where she lived or did business. The injuries are not tethered to
23 Washington in any meaningful way, and the traditional rule, that “the plaintiff cannot be the only
24 link between the defendant and the forum,” compels the conclusion that the July 2016 statements
25 do not establish a prima facie showing of specific personal jurisdiction over Ms. Cole. Walden,
26

1 134 S. Ct. at 1122.


2 In her response to the motion, Ms. Yoast identifies a number of other statements and
3 communications in which Ms. Cole was involved. All but one of these communications have no
4 connection with the forum state (such as emails between Ms. Cole and other non-residents), do
5 not give rise to Ms. Yoast's claims (such as Ms. Cole's September 2014 inquiry about
6 purchasing jackets or her internal, unpublished JDI communications), or are merely third-party
7 reports of what Ms. Cole said at the July 2016 meeting. The only jurisdictionally relevant
8 communications are the Facebook discussion at Dkt. # 36-1 at 9 in which Ms. Cole publicly
9 questions the appropriateness of Ms. Yoast selling items that compete with JDI-sanctioned sales
10 and fundraisers. That discussion arguably gave rise to Ms. Yoast's counterclaims to the extent it
11 convinced potential purchasers to cancel or refrain from placing orders for Ms. Yoast's products.

12 Whether a tortious statement on the internet combined with knowledge of the target's
13 residence is sufficient to establish purposeful direction has not been definitively resolved by the
14 Ninth Circuit, but the majority of district courts has determined that something more is required.
15 See Cummins v. Lollar, 2013 WL 12124089, at *5-6 (C.D. Cal. Feb. 11, 2013); Xcentric
16 Ventures, LLC, v. Bird, 683 F. Supp.2d 1068, 1074 (D. Ariz. 2010); Lange v. Thompson, 2008
17 WL 3200249, at *3 (W. D. Wash. Aug. 6, 2008); Medinah Mining, Inc. v. Amunategui, 237 F.
18 Supp.2d 1132, 1138 (D. Nev. 2002). There is nothing more here. All Ms. Yoast has shown is
19 that Ms. Cole made statements on the internet with knowledge that they were likely to impact a
20 Washington resident. "[T]his goes to the foreseeability of harm in the forum, not whether the
21 conduct was 'expressly aimed' at the forum." Cummins, 2013 WL 12124089, at *5. See Morrill
22 v. Scott Fin. Corp., 873 F.3d 1136, 1144-45 (9th Cir. 2017) (finding that foreseeability of harm
23 to plaintiffs in the forum does not show that defendants expressly targeted the forum state:
24 "[s]uch reasoning improperly attributes a plaintiff's forum connections to the defendant and
25 makes those connections 'decisive' in the jurisdictional analysis. It also obscures the reality that
26

1 none of [the] challenged conduct had anything to do with [the forum state] itself.”) (quoting
2 Walden, 134 S. Ct. at 1125). The injuries of which Ms. Yoast complains were not the result of
3 any contact Ms. Cole had with or aimed at the forum state and were in no way dependent on the
4 fact that Ms. Yoast resided in Washington.

5
6 Because Ms. Yoast has not met her burden of establishing that Ms. Cole purposefully
7 directed her allegedly tortious statements at Washington (or purposefully availed herself of this
8 forum), the Court lacks specific jurisdiction over her. The motion to dismiss (Dkt. # 32) is
9 therefore GRANTED.

10
11 Dated this 5th day of January, 2018.

12 
13 _____
14 Robert S. Lasnik
15 United States District Judge
16
17
18
19
20
21
22
23
24
25
26